

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2047

AN ACT

AMENDING SECTION 32-1365.02, ARIZONA REVISED STATUTES; RELATING TO CONSENT FOR CREMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-1365.02, Arizona Revised Statutes, is amended to
3 read:

4 32-1365.02. Authorizing agents: consent for cremation,
5 disinterment or embalming

6 A. Except as provided in section 32-1365.01 and ~~is~~ subsection E-F of
7 this section, it is unlawful to cremate or disinter a dead human body without
8 prior written consent of the authorizing agent.

9 B. Except as provided in section 32-1365.01, it is unlawful to embalm
10 a dead human body without prior oral or written consent of the authorizing
11 agent.

12 C. A funeral establishment shall create a written record of an oral
13 consent given pursuant to this ~~subsection~~ SECTION that includes all of the
14 following:

- 15 1. The name of the authorizing agent.
- 16 2. The relation of the authorizing agent to the deceased.
- 17 3. The date and time that consent was given.
- 18 4. The name of the person who obtained the consent.
- 19 5. Any other information required by the board.

20 D. In determining who the proper authorizing agent is, the following
21 order of preference governs UNLESS A WAIVER IS SIGNED PURSUANT TO SUBSECTION
22 L OF THIS SECTION:

23 1. The surviving spouse, UNLESS THE DECEDENT AND SPOUSE WERE LEGALLY
24 SEPARATED.

25 2. THE PERSON WHO IS DESIGNATED AS HAVING POWER OF ATTORNEY FOR THE
26 DECEDENT IN THE DECEDENT'S MOST RECENT DURABLE POWER OF ATTORNEY.

27 2. A surviving adult child.

28 3. A surviving parent.

29 4. A surviving adult brother or sister.

30 3. SURVIVING ADULT CHILDREN OF THE DECEDENT.

31 4. SURVIVING PARENTS OF THE DECEDENT.

32 5. SURVIVING ADULT SIBLINGS OF THE DECEDENT.

33 6. ADULT GRANDCHILDREN OF THE DECEDENT.

34 7. GRANDPARENTS OF THE DECEDENT.

35 5. 8. For cremation or embalming, any other person or organization
36 that is willing to assume legal and financial responsibility for the
37 cremation or embalming. Preference under this paragraph shall be given in
38 the following order:

- 39 (a) The executor of the decedent's estate.
- 40 (b) The guardian of the decedent at the time of death.

41 E. IF THERE IS MORE THAN ONE MEMBER OF A CLASS LISTED IN SUBSECTION D,
42 PARAGRAPHS 3, 4, 5, 6 OR 7 OF THIS SECTION ENTITLED TO SERVE AS THE
43 AUTHORIZING AGENT, FINAL ARRANGEMENTS MAY BE MADE BY A MEMBER OF THAT CLASS
44 UNLESS THAT MEMBER KNOWS OF AN OBJECTION BY ANOTHER MEMBER OF THE CLASS. IF

1 AN OBJECTION IS KNOWN, FINAL ARRANGEMENTS SHALL BE MADE BY A MAJORITY OF THE
2 MEMBERS OF THE CLASS WHO ARE REASONABLY AVAILABLE.

3 ~~E.~~ F. On the order of a court or a county medical examiner, or a
4 person performing the duties of a county medical examiner, a dead human body
5 shall be disinterred.

6 ~~F.~~ G. If none of the persons listed in subsection D is willing or
7 financially capable of providing for the cremation or embalming of a dead
8 human body, the public fiduciary or other person who is designated by the
9 county in which a death occurs to handle funeral arrangements may order the
10 cremation or embalming.

11 ~~G.~~ H. A funeral establishment, an employee or agent of a funeral
12 establishment or a licensee shall exercise due diligence to obtain the
13 consent required pursuant to this section from the proper authorizing agent.

14 IT IS AN AFFIRMATIVE DEFENSE TO ANY ACTION OR CLAIM BROUGHT AGAINST A
15 CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT RELATING TO THE DISPOSITION OF A
16 DEAD HUMAN BODY THAT THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT RELIED
17 IN GOOD FAITH ON THE DIRECTION OF A PERSON WHO CLAIMED TO BE THE AUTHORIZING
18 AGENT IN PROVIDING FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY. THE
19 DECISION OF A CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT TO CREMATE OR
20 OTHERWISE PROVIDE FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY IN RELIANCE
21 ON THE DIRECTION OF A PERSON WHO CLAIMS TO BE THE AUTHORIZING AGENT IS
22 PRESUMED TO BE IN GOOD FAITH UNLESS THE CREMATORY, CEMETERY OR FUNERAL
23 ESTABLISHMENT HAS ACTUAL KNOWLEDGE THAT THE CLAIM IS FALSE.

24 I. IF THE AUTHORIZING AGENT IS NOT REASONABLY AVAILABLE OR UNABLE TO
25 ACT AS AUTHORIZING AGENT, THE PERSON'S RIGHT TO BE THE AUTHORIZING AGENT
26 PASSES AS FOLLOWS:

27 1. TO ANOTHER PERSON OR CLASS OF PERSONS IN THE SAME DEGREE OF
28 RELATIONSHIP TO THE DECEDENT AS THE PERSON WHO IS NOT REASONABLY AVAILABLE OR
29 UNABLE TO MAKE FINAL ARRANGEMENTS FOR THE DECEDENT.

30 2. THE NEXT PERSON OR CLASS OF PERSONS IN THE ORDER OF PREFERENCE
31 PRESCRIBED BY SUBSECTION D OF THIS SECTION.

32 J. IT IS PRESUMED THAT THE AUTHORIZING AGENT IS NOT REASONABLY
33 AVAILABLE TO ACT AS AUTHORIZING AGENT IF THE CREMATORY, CEMETERY OR FUNERAL
34 ESTABLISHMENT AFTER EXERCISING DUE DILIGENCE HAS BEEN UNABLE TO CONTACT THE
35 INDIVIDUAL OR IF THAT PERSON HAS BEEN UNWILLING OR UNABLE TO MAKE FINAL
36 ARRANGEMENTS FOR THE DISPOSITION OF THE DECEDENT WITHIN FIFTEEN DAYS OF THE
37 INITIAL CONTACT BY THE CREMATORY, CEMETERY OR FUNERAL ESTABLISHMENT. IF A
38 PERSON IN A PRIOR CLASS MAKES AN INITIAL CONTACT WITH THE CREMATORY, CEMETERY
39 OR FUNERAL ESTABLISHMENT OR BECOMES ABLE PRIOR TO THE FINAL DISPOSITION OF
40 THE DECEDENT, THAT INDIVIDUAL SHALL RESUME THE RIGHT TO SERVE AS THE
41 AUTHORIZING AGENT.

42 K. ANY DISPUTE AMONG ANY OF THE PERSONS LISTED IN SUBSECTION D OF THIS
43 SECTION CONCERNING THEIR RIGHT TO CONTROL THE DISPOSITION, INCLUDING
44 CREMATION, OF A DECEDENT'S REMAINS SHALL BE RESOLVED BY THE PARTIES TO THE
45 DISPUTE OR BY A COURT OF COMPETENT JURISDICTION. A CREMATORY, CEMETERY OR

1 FUNERAL ESTABLISHMENT SHALL NOT BE LIABLE FOR REFUSING TO ACCEPT THE
2 DECEASED'S REMAINS OR INTER, CREMATE OR OTHERWISE DISPOSE OF A DECEASED'S
3 REMAINS UNTIL IT RECEIVES A COURT ORDER OR OTHER SUITABLE CONFIRMATION THAT
4 THE DISPUTE HAS BEEN RESOLVED OR SETTLED. A CREMATORIAL, CEMETERY OR FUNERAL
5 ESTABLISHMENT MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION IN
6 ORDER TO EXPEDITE THE RESOLUTION OF A DISPUTE AMONG THE PARTIES LISTED IN
7 SUBSECTION D OF THIS SECTION.

8 L. DURING A PERSON'S LIFE, THE PERSON'S FAMILY MEMBERS THAT ARE LISTED
9 IN SUBSECTION D OF THIS SECTION MAY SIGN A WAIVER OF DECISION MAKING THAT
10 WAIVES THEIR RIGHTS UNDER THIS SECTION RELATING TO THE DISPOSITION OF THE
11 PERSON'S BODY WHEN THE PERSON DIES.

12 M. FOR THE PURPOSES OF THIS SECTION, "REASONABLY AVAILABLE" MEANS ABLE
13 TO BE CONTACTED BY THE CREMATORIAL, CEMETERY OR FUNERAL ESTABLISHMENT WITHOUT
14 UNDUE EFFORT AND WILLING TO ACT WITHIN FIFTEEN DAYS OF THE INITIAL CONTACT BY
15 THE CREMATORIAL, CEMETERY OR FUNERAL ESTABLISHMENT.